APPENDIX C

REPORT OF COMMITTEE ON LAW AND LEGISLATION

Arbitration Legislation: Uniform Act

On August 20, 1955, the National Conference of the Commissioners on Uniform State Laws adopted a draft "Act Relating to Arbitration and to Make Uniform the Law with Reference Thereto," covering, in a single proposed statute, both commercial and labor dispute arbitration. The draft act, a copy of which is annexed hereto, was approved by the House of Delegates of the American Bar Association on August 26, 1955.

The promulgation of the draft act has been hailed by the American Arbitration Association as "one of the most important developments in American Arbitration."[1] The Association regards the draft act as "a considerable improvement over any statutory arbitration law,"[2] and it appears to be the intention of the Association to promote the draft act throughout the country. It may be noted that the Law Committee of the Association played an active part in the development of the draft act.

The Academy's basic policy with respect to labor dispute arbitration legislation is stated in the following resolutions, which were adopted at the January, 1955, Annual Meeting:

> Resolved, That the Academy refrain from taking any official position on the question of whether there should or should not be statutory regulation, either at the Federal or State levels, with respect to voluntary labor dispute arbitration."

---

[1] Arbitration News, Issue No. 6 (1955).

[2] Memorandum, dated September 14, 1955, to the members of the Association's Arbitration Law Committee.

> Resolved, That the Academy may consistently refrain from taking an official position on the principle of statutory regulation, while at the same time indicating its judgment as to the desirable content of regulatory statutes.

In other resolutions adopted at the same time the Academy's Committee on Law and Legislation was directed to make its views known to the Commissioners concerning the content of the draft act then under consideration and to "make available to members, or Regional groups of members, upon request, the Committees' findings as to the propriety of any specific statutory proposals which may be under consideration" locally (i.e., in the several states).[3] Regrettably, perhaps, the Committee did not communicate its views to the Commissioners.[4] The result is that such views as the Academy, the Committee, or any members of the Academy have can henceforth be effective only in generally publicized discussions of the draft act or in local presentations in states which have the draft act under consideration.

In its Report of May 2, 1953, the Committee recommended that the Academy, while refraining from taking a position on the question whether there should or should not be statutory regulation, should subscribe to certain principles "relating to the objectives and content of labor disputes arbitration legislation" as set forth in the Report. These recommended principles on statutory content have never been acted upon either by the

---

[3] The resolutions expressed the view that local statutes in several states are matters to be dealt with locally, so far as the Academy is concerned, and evidently through members of the Academy in the locality.

[4] It should be noted, however, that Dean Maynard Pirsig, who chaired the Commissioner's subcommittee on the draft act, in correspondence with the Chairman of the Committee on Law and Legislation in the Spring of 1955, graciously invited the Committee to submit its comments and criticisms. The Chairman feels that he was derelict in failing to move to take advantage of this opportunity and can offer only the plea of an overcrowded schedule. Whether comments and criticisms of the kind offered in this report would have had any substantial impact is obviously a matter for speculation. The draft act had already passed its first reading, in the fall of 1954, and prior thereto many of the points made in this report had been offered to the subcommittee of the Commissioners through Professor William J. Pierce, Associate Director of the Legislative Research Center of the University of Michigan Law School and himself a Commissioner from Michigan. The chairman of the Committee on Legislation had also submitted many of the same observations earlier to the AAA Law Committee. Finally, the Chairman wishes to record his question as to the desirability of official expressions of view by the Academy Committee in the absence of approval of these views by the Academy or the Board of Governors.

membership or by the Board of Governors and therefore cannot, as of now, be said to represent Academy policy. However, the Committee has recently undertaken to analyze the draft act in the light of the principles stated in the 1953 Report, and submits the results to the members of the Academy as a matter of general information. The outline followed is that which was used in the 1953 Report.

I—Appraisal of General Objectives of the Draft Act

The Legislation Committee Report stated that the proponents of arbitration legislation might reasonably seek to accomplish at least the following objectives:

1. The removal of doubts as to the legal enforceability of agreements to arbitrate disputes (including future disputes).

2. Providing expeditious means for compelling arbitration pursuant to an agreement to arbitrate.

3. Clarifying (by precise specification) the grounds for judicial review of arbitration awards, and undertaking, thereby, to make clear the role of the arbitrators and of the courts, respectively, in such a way as to leave each agency its proper function without invasion of the province of the other.

4. Seeking to preclude resort to litigation over contract questions concerning which arbitration has been agreed upon.

The Committee believes that the first two and the fourth of these objectives are substantially accomplished by Sections 1, 2, and 16 of the draft act. The effect of these provisions is to make agreements to arbitrate existing or future labor disputes (unless excluded from the operation of the act by agreement) enforceable by proceedings which are both expeditious and effective, and to provide effective means for staying court action involving an issue subject to arbitration. However, as noted more fully hereinafter, we believe that the provisions of the draft act which deal with judicial review of awards (Sections 12

and 13) do not satisfactorily meet the problem of establishing the proper relationship between arbitrators and courts, since the draft act does not sufficiently safeguard the arbitration function.

II–Appraisal of Specific Contents of the Draft Act

A. Scope

1. *Relation to common law arbitration.*

The Legislation Committee Report states:

> A statute should preserve the availability of common law arbitration, either by providing that the statute is applicable only if the patries so provide, or by providing that it is inapplicable only if the parties so provide; however, the statute should modify the common law as to all arbitrations (whether statutory or non-statutory) to the extent of legalizing agreements to arbitrate.

Section 1 of the draft act makes it possible for parties to a labor agreement to avoid the applicability of the act in its entirety by the simple device of stipulating to this effect.

Thus the parties may, in a collective agreement or in a stipulation relating to a specific dispute, preserve common law arbitration, which is consistent with the Committee's recommendations. The act does not, in the event of such stipulation, modify the common law to the extent of making the agreement to arbitrate enforceable, and to this extent is inconsistent with the Committee's recommendations. The parties must either accept or reject the act in its entirety. We think, however, that this is a relatively minor criticism.

2. *Kinds of disputes which may be submitted for statutory arbitration.*

The Legislation Committee Report stated:

> A statute should provide that any labor dispute may be submitted for arbitration thereunder, whether "justiciable" or not, and regardless of the fact that some other special means of adjudication or determination is available.

Section 1 of the draft act does not contain specific language of the kind contemplated by the Committee's recommendation, but it does legalize broadly agreements to arbitrate an existing or future "controversy." It is possible, though improbable, that the term "controversy" will be construed to cover only disputes justiciable in nature and thus as being inapplicable to agreements to arbitrate contract terms, as distinguished from contract "rights." It is also possible, though again improbable, that the courts might consider the act to be inapplicable to disputes which could be presented to some other tribunal (e.g., the National Labor Relations Board). On the whole, we believe that Section 1 is acceptable.

B. Provisions Relating to the Enforcement of Agreements to Arbitrate

The Legislation Committee Report stated:

> A statute should provide for summary proceedings in a proper court with authority (1) to order the defaulting party to proceed to arbitrate (and to cause an arbitration tribunal to be impanelled if the defaulting party refuses to cooperate), and (2) to stay (or enjoin) any attempt by the defaulting party to use other legal proceedings (e.g., suit on the contract) with respect to the issues involved.

We believe these principles are aptly incorporated in Sections 2, 3, 16, 17, and 18 of the draft act. Summary judicial proceedings are made available to compel arbitration where there is an agreement to arbitrate, and provision is made for a stay of actions or other proceedings involving issues subject to arbitration.

C. Pre-Arbitration Matters

1. *The submission agreement*

The Legislation Committee Report stated:

> (1) A duly executed submision agreement should not be mandatory in all cases; it should be mandatory when the

arbitration is the result of special agreement (i.e., is not a terminal step in the contract grievance procedure).

(2) A statute should not attempt to regulate the contents of the submission agreement.

(3) If a statute does attempt to regulate the contents of the submission agreement, contrary to the recommendation of the Committee, the Committee proposes as follows:

"(a) It should require that the agreement either contain a statement of the issue or issues to be arbitrated or a provision authorizing the arbitrator to formulate the issues from the available evidence (as from the documents filed under the contract grievance procedure).

"(b) It should require that the parties stipulate concerning the assessment of costs, but such provision should be directory only (so that its absence will not invalidate the agreement).

"(c) It should require, in the case of an arbitration of contract terms ('interests'), that the agreement shall specify the standards to be applied by the arbitrator, if any specific standards have been agreed upon, but such provision should be directory only (so that its absence will not invalidate the agreement)."

The draft act is consistent with recommendations (1) and (2), and thus is in basic accord, on this matter, with the position taken by the Committee. The term "submission agreement" is not used in the act, but Section 1 clearly contemplates the use of an ordinary submission agreement with respect to an agreement to "submit an existing controversy to arbitration" and just as clearly contemplates that no special submission agreement is required when an arbitrable issue arises under an agreement (e.g., a collective bargaining agreement) containing a provision for the arbitration of future disputes. There is no attempt to regulate the contents of the submission agreement.

2. *The selection and qualifications of arbitrators.*

The Legislation Committee Report stated:

(1) A statute should specify a method for selection of the arbitrator for the submitted case, to be used (a) when

the parties have failed to designate the arbitrator or to specify the method for his selection, or (b) when the parties, having specified a method of selection requiring joint participation of each, fail to cooperate in the use of such method of selection.

(2) A statute should provide in such case for the appointment of the arbitrator from a panel to be submitted by the federal or state mediation agencies, or by the American Arbitration Association.

(3) A statute should not attempt to prescribe any standard of qualifications for arbitrators.

Section 3 of the draft act conforms fully to recommendations (1) and (3) but not to recommendation (2). If an agreed-upon method of appointing the arbitrator fails or when an arbitrator appointed fails or is unable to act and a successor has not been appointed by the parties, the court on application of a party must appoint "one or more arbitrators." However, the court in such case would have carte blanche authority in making the appointment and would not be required to avail itself of the services of any of the established agencies. Perhaps this situation is due in part to the fact that the draft act covers both labor dispute and commercial arbitration, with the consequence that on this point as well as others differential treatment was considered to be impracticable. On the whole, the matter is not one of great significance since the parties will have it within their power to specify that some one of the established agencies shall be used in selecting the arbitrator.

D. Arbitration Procedure

1. *The hearing.*

The Legislation Committee Report stated:

A statute should require a hearing, on due notice, in the absence of a waiver thereof by the parties.

Section 5 of the draft act so provides and includes the useful provision that appearance at the hearing waives any lack of prior notice.

2. *Evidence.*

The Legislation Committee Report stated:

> (1) A statute should not make the legal rules of evidence binding either absolutely or in some degree (as, for example, by making them binding 'insofar as practicable' as under the National Labor Relations Act.)
>
> (2) A statute should empower arbitrators to administer oaths.
>
> (3) A statute should not require that a record of the testimony and other evidence be taken by an official reporter, and the preparation of a transcript, except if either party or the arbitrator so desires, in which case the statute should also provide for the basis of assessing of the cost thereof and that, if a party demands a transcript, a copy shall be made available to the other party and to the arbitrator.

The draft act (Section 5), which deals with the hearing, does not state that the arbitrators are or are not bound by the legal rules of evidence. In view of the possibility that the act as written will be construed to make the rules of evidence applicable, it would have been preferable to provide otherwise, expressly, in the act, as is customary in legislative drafting where intention is to relax the requirement. This is especially desirable in view of the fact that, under Section 12 (a) (5), an award may be vacated if the court finds that the arbitrators "so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party." The receipt by arbitrators of "hearsay" evidence, for example, should not be regarded as error per se or even as an insufficient basis per se for a finding of fact.

On the matter of evidence, it should be noted further that Section 7 (b) authorizes the arbitrators to "permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing." We feel that this is an unduly restrictive provision, in its implications, since it might very well

be construed as prohibiting (a) the receipt of affidavits in evidence, as distinguished from "depositions,"[5] and (b) the use of affidavits or depositions where the affiant could have been produced to testify in person. We believe further that Section 7(d), which allows fees to witnesses as in court proceedings, is not apt and should be omitted in a statute covering labor dispute arbitration.[6]

Section 7(a) empowers the arbitrators to administer oaths and is thus consistent with the Committee's recommendation on this point.

The draft act is silent on the question of taking of a verbatim record of the hearing and the preparation of a transcript. Yet the provisions for judicial review, especially Section 12(a)(5) mentioned above, might well be construed, together with the provisions for a hearing, as necessitating a full record and transcript in every case. In line with recommendation (3) of the Committee, we consider this to be a weakness in the act. We think that it would have been preferable to include a specific provision on this subject of the kind suggested in the recommendation.

3. *Power of subpoena.*

The Legislation Committee Report stated:

> A statute should empower the arbitrator to issue subpoenas.

This power is conferred by Section 7(a) of the draft act.

4 *Pre-hearing conferences.*

The Legislation Committee Report stated:

> A statute should authorize the arbitrator to call a pre-hearing conference with the parties for the purposes of (1)

[5] While the rules relating to the taking of depositions in judicial proceedings vary to some extent from state to state, they commonly prescribe that due notice must be given to the opposing party (or his counsel), that the latter must have the opportunity to attend the taking of the deposition and question the affiant or to file cross-interrogatories which the affiant must answer, that the deposition must be taken before some duly authorized person and taken in proper form, etc. Section 7(b) of the draft act gives the arbitrators some discretion concerning deposition procedure, but it is not clear that they could waive the basic characteristics of the procedure.

[6] Very commonly collective agreements provide that employee-witnesses are not to suffer losses of pay because of attendance at grievance and arbitration hearings.

> settling questions of ambiguity, if possible, concerning the formulation of the issues intended to be submitted, or, if impossible, obtaining agreement that such ambiguities shall be resolved by the arbitrator, (2) obtaining fact stipulations, (3) agreeing upon procedural details for the hearing, and (4) agreeing on the scope of the arbitrator's authority.

The draft act is silent on this matter. It is perhaps not a point of great consequence since the arbitrators could doubtless, without explicit statutory authorization, convene the parties prior to the hearing for the purposes indicated, at least with their consent.

5. *Time limits within which award shall be made.*

The Legislation Committee Report stated:

> A statute should not contain a provision specifying any time limit within which the award shall be handed down.

Section 8(b) of the draft act provides that an award "shall be made within the time fixed therefor by agreement or, if not so fixed, within such time as the court orders on application of a party * * *" This provision, together with what follows in this section, is unobjectionable.

6. *The contents of the award.*

The Legislation Committee Report stated:

> The Committee is evenly divided on the question whether a statute should require the arbitrator to write an opinion in support of his award (unless waived by the parties); hence no recommendation is made.

Section 8(a) of the draft act provides that "the award shall be in writing" but does not specify that a supporting opinion shall be written.

E. The Role of the Courts

1. *The scope of the courts' pre-arbitration jurisdiction.*

The Legislation Committee Report stated:

> A statute should authorize courts of competent jurisdiction to compel or stay arbitration, by summary proceed-

ing, and, in connection with such summary proceeding, to decide only the question of whether a valid arbitration agreement exists.

The draft act conforms to this recommendation. Under Sections 2 and 16, proceedings on motion are available to compel or stay arbitration. The only issue to be tried is whether there is an agreement to arbitrate, and, when this issue is raised, it is to be tried "summarily." One of the possible objections to pre-arbitration jurisdiction is that courts may, under the guise of inquiring whether an agreement to arbitrate exists, pass on the merits of the underlying dispute between the parties. Section 2(e) is addressed to this problem and provides that "an order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown." This language is well chosen, although it should be recognized that it is probably impossible to contrive a statutory formula which will completely eliminate the risk of judicial invasion of the arbitrator's function in a pre-arbitration decision on the existence of an agreement to arbitrate.

2. *The scope of the courts' post-arbitration jurisdiction.*

The Legislation Committee Report stated:

(1) A statute should *not* attempt to deny to the courts the authority to review arbitration awards.

(2) A statute should provide that the arbitrator's findings of fact and of law (including questions of contract interpretation) shall be final and non-reviewable. However, a statute should provide that, if it is alleged that the arbitrator has exceeded his powers, the court shall have jurisdiction to determine whether the arbitrator's finding concerning his authority lacked any reasonable basis, unless the parties have expressly agreed that the arbitrator's decision on questions relating to the scope of his authority shall be final.

(3) A statute should provide that the court shall have authority to review an award on the ground that the arbi-

> trator has engaged in improper conduct, or that the award involves a clear mistake or clerical error.

The draft action (Sections 12 and 13) is consistent with recommendations (1) and (3) but provides broader grounds for vacating awards than are contemplated by recommendation (2). Section 12(a) provides seven grounds upon which a court may vacate an award. This contrasts with five grounds specified in the present New York statute,[7] which may be taken as an example of a fairly modern arbitration act, and four grounds (which are, in fact, exactly the same as four of the five grounds stated in New York) specified in the federal arbitration act.[8] A comparison of Section 12(a) with its New York counterpart reveals that Section 12(a) contains all of the grounds for vacating an award which are stated in New York, with little change in language, and *in addition,* permits the vacation of the award where the award is "contrary to public policy" or is "so grossly erroneous as to imply bad faith on the part of the arbitrators." Thus, instead of using language which would attempt to limit judicial intervention and thus meeting a problem which has developed under the traditional statutory language,[9] the draftsmen seem to have invited still more appeals to the courts from arbitration decisions. This clearly does not conform to the principles underyling the Legislation Committee's recommendation (2), and we believe this a serious deficiency. Of the grounds stated in Section 12(a), the following are the most significant:

> (3) The arbitrators exceeded their powers or rendered an award contrary to public policy.

---

[7] Section 1462, Article 84, New York Civil Practice Act.

[8] U.S.C., Title 9, Section 10.

[9] For treatments of this problem, see Summers, "Judicial Review of Labor Arbitration," 2 Buff. L. Rev. 1 (1952); Scoles, "Review of Labor Arbitration Awards on Jurisdictional Grounds," 17 U. Chi. L. Rev. 616 (1950); Syme, "Arbitrability of Labor Disputes," 5 Rutgers L. Rev. 455 (1951); Summers, "Judicial Review of Labor Arbitration," 2 U. Buffalo L. Rev. 1 (1952); Cox, "Legal Aspects of Labor Arbitration in New England," 8 Arb. J. (n.s.) 5 (1953); Mayer, "Arbitration and the Judicial Sword of Damocles," 27 Temple L.Q. 165, 4 Lab. L.J. 723 (1953); and Rosenfarb, "The Courts and Arbitration," Proceedings of New York University Sixth Annual Conference on Labor, p. 161 (1953).

(6) The award is so grossly erroneous as to imply bad faith on the part of the arbitrators.

We think it is vitally important to the integrity and utility of the labor dispute arbitration process that the parties clearly understand and accept the proposition that the decision of the arbitrator finally disposes of the dispute in the absence of gross misconduct on the part of the arbitrator or a clear instance of action ultra vires.

In this connection we think it is of the utmost importance that the parties and others concerned, including the courts, should recognize and agree that the arbitrator's decisions on questions of fact and of contract interpretation must be accepted as final, where these issues have been submitted to him, and that in many instances so-called "jurisdictional" questions, purportedly involving the basic authority conferred upon the arbitrator, very frequently themselves require the arbitrator's interpretation of some contract provision or provisions, which should be binding unless wholly unreasonable.

3. *Procedures for obtaining judicial review within the limits which are proper.*

The Legislation Committee Report stated:

> A statute should provide for an expeditious proceeding to vacate or modify the award, with the further provision that, unless such proceeding is commenced within a prescribed (and short) period, the award shall not be subject to judicial review. The statute should further provide that the award shall be filed in a proper court and shall have the status of a final judgment or decree unless such proceeding to vacate or modify the award is commenced within such prescribed period.

The draft act, in Sections 12(b) and 13(a), requires an application to vacate or modify an award to be made within ninety days after its delivery, in most cases. The clear implication is that, unless the application is made within the stated time, the award is not subject to judicial review. These provisions conform to the principles recommended by the Committee.

4. *Disposition of the case by the reviewing court upon finding reviewable error (other than clerical or arithmetic error, which the court obviously will simply correct.)*

The Legislation Committee Report stated:

> A statute should provide that, upon finding reviewable error (other than clerical or arithmetic error, which the court shall correct), the court shall remand the case to the original arbitrator for reconsideration, including rehearing where indicated, unless there was misconduct by the arbitrator, in which case the court shall direct the case to be reheard by a different arbitrator, to be selected as was the original arbitrator.

Section 12(c) of the draft act partially conforms to this recommendation but in some respects does not. The court is given authority to order a rehearing before new arbitrators in any case, although it is likewise permitted, in certain cases (where the ground of vacation of the award is excess of powers, rendering an award contrary to public policy, rendering an indefinite or incomplete award, or refusing to postpone the hearing on sufficient cause or to admit material evidence), to order the rehearing before the original arbitrator. On the whole, this provision is not seriously objectionable.

Miscellaneous

Section 6 of the draft act provides: "A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective." The only objection to this provision arises out of the possibility that it will be construed to imply that non-lawyers may not represent a party. This rule would be unsound for labor dispute arbitration, since in many instances the parties, especially unions, have customarily been represented by non-lawyers (e.g., international representatives). It is unnecessary to make this practice illegal.

Section 14 of the draft act provides:

> Upon the granting of an order confirming, modifying or correcting the award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree * * *.

Conceivably, a question could be raised whether this language adequately assures that the court will grant a decree of the kind which, as an original matter, it would not grant under traditional doctrine (e.g., a decree requiring the rehire or reinstatement of a discharged employee). However, the language used is similar to that which has been used in the New York and other statutes, and seems not to have produced this problem. Another question is whether the act should not have provided that, in respect to decrees of enforcement which are tantamount to mandatory injunctions, the provisions of the state's anti-injunction act (if any) do not apply. However, this likewise is not very important, in view of the likelihood that the court will reach the same result by interpretation.

It is probably unwise, on the whole, to attempt to combine coverage of commercial and labor dispute arbitration in a single statute, since the context, setting, and general function of arbitration in the two fields are ordinarily quite different. Whereas commercial arbitration seeks to avoid litigation, labor dispute arbitration seeks to avoid economic strife, whereas in commercial arbitration the parties are usually dealing at arm's length and for temporary periods, in labor dispute arbitration they are usually implementing a continuing collective bargaining relationship. These differences might well lead to somewhat different approaches in framing a regulatory statute, as, for example, in considering what kind of provisions for judicial review to include. The development of separate statutes for the two kinds of arbitration would make it easier to take account of the needs and realities of each.

General Conclusion

The draft act has many good features, and is subject to serious objection, as a statute covering labor dispute arbitration, primarily in its failure to restrict judicial review of awards to the extent which is desirable. The Committee is prepared to develop further its views on the contents of the draft act, upon request of the members of the Academy or regional groups of members, in accordance with the authority granted by the membership at the January, 1955, Annual Meeting of the Academy.

Respectfully submitted,
George E. Bowles
Frank Elkouri
Charles C. Killingsworth
William R. Forrester
I. Robert Feinberg
*Alexander H. Frey
Walter Gellhorn
Sylvester Garrett
*Robert E. Mathews
Russell A. Smith, Chairman

Resolution on Proposed Uniform Arbitration Act

28 January 1956

At the January, 1956, Annual Meeting it was resolved that the Academy should refrain from taking any official position on the question of whether there should or should not be statutory regulation of voluntary labor dispute arbitration, but that the Academy could, consistently with this policy, indicate its judgment as to the desirable content of regulatory statutes. Since then the proposed Uniform Arbitration Act, covering both labor dispute and commercial arbitration, has been promulgated. An analysis of this proposed Act by our Legislative Com-

* As of November 18, 1955, Messrs. Frey and Mathews had not indicated their views on the substance of this report.

mittee and certain of our regional groups shows that it contains certain deficiencies and defects insofar as it would apply to labor dispute arbitration. It is therefore the judgment of the Academy that the widespread adoption of the proposed Act in its present form would be a disservice to labor-management relations.

RESOLVED, therefore, that the Academy oppose the enactment of the proposed Uniform Arbitration Act in its present form insofar as it would apply to labor dispute arbitration;

RESOLVED, further, that the Board of Governors of the Academy, in consultation with the Academy's Committee on Law and Legislation, prepare a formal statement of the position of the Academy concerning the proposed Uniform Act, such statement to include specific proposals of changes deemed necessary to make the proposed Act acceptable;

RESOLVED, further, that the Board of Governors take appropriate action to make known the position of the Academy on the proposed Uniform Act.

APPENDIX D

Act Relating To Arbitration And To Make Uniform The Law With Reference Thereto

Section 1—Validity of Arbitration Agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act also applies to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement.)

Section 2—Proceedings to Compel or Stay Arbitration

(a) On application of a party showing an agreement described in Section 1, and the opposing party's refusal to arbitrate, the Court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the Court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a

court having jurisdiction to hear applications under subdivision (a) of this Section, the application shall be made therein. Otherwise and subject to Section 18, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

Section 3—Appointment of Arbitrators by Court

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

Section 4—Majority Action by Arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

Section 5—Hearing

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The

arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

Section 6—Representation by Attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective.

Section 7—Witnesses, Subpoenas, Depositions

(a) The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner

and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the ..... Court.

Section 8—Award

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

Section 9—Change of Award by Arbitrators

On application of a party or, if an application to the court is pending under Sections 11, 12 or 13, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of Section 13, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of Sections 11, 12 and 13.

Section 10—Fees and Expenses of Arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

Section 11—Confirmation of an Award

Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 and 13.

Section 12—Vacating an Award

(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers or rendered an award contrary to public policy;

(4) The award is so indefinite or incomplete that it cannot be performed;

(5) The arbitrators refused to postpone the hearing upon sufficient cause being shown thereof or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party;

(6) The award is so grossly erroneous as to imply bad faith on the part of the arbitrators; or

(7) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration

hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this Section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (7) of Subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 3, or, if the award is vacated on grounds set forth in clauses (3), (4), and (5) of Subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Section 13—Modification or Correction of Award

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Section 14—Judgment or Decree on Award

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

Section 15—Judgment Roll, Docketing

(a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying or correcting the award; and

(4) A copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

Section 16—Applications to Court

Except as otherwise provided, an application to the court under this act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have

agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

Section 17—Court, Jurisdiction

The term "court" means any court of competent jurisdiction of this State. The making of an agreement described in Section 1 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this Act and to enter judgment on an award thereunder.

Section 18—Venue

An initial application shall be made to the court of the (county) in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the (county) where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any (county). All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

Section 19—Appeals

(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under Section 2;

(2) An order granting an application to stay arbitration made under Section 2 (b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Section 20—Act Not Retroactive

This act applies only to agreements made subsequent to the taking effect of this act.

Section 21—Uniformity of Interpretation

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 22—Constitutionality

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given without the invalid provision or application, and to this end the provisions of this act are severable.

Section 23—Short Title

This act may be cited as the Uniform Arbitration Act.

Section 24—Repeal

All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Section 25—Time of Taking Effect

This act shall take effect.....

Note. Bracketed language and bold-face section titles, the Commissioners suggest, may be used by those states desiring to do so.